



Securex Agencies Kenya Limited v Zuma & another (Suing as legal representatives of the Estate of Peter Njole Zuma - Deceased) (Civil Appeal E172 of 2023) [2025] KEHC 3546 (KLR) (21 February 2025) (Judgment)

Neutral citation: [2025] KEHC 3546 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
CIVIL APPEAL E172 OF 2023
M THANDE, J
FEBRUARY 21, 2025**

BETWEEN

SECUREX AGENCIES KENYA LIMITED APPELLANT

AND

MLONGO NJOLE ZUMA & MBETU NJOLE ZUMA (SUING AS LEGAL REPRESENTATIVES OF THE ESTATE OF PETER NJOLE ZUMA - DECEASED) RESPONDENT

(An Appeal from the judgment of Hon. Ritah Amwayi P. M. delivered on 22.11.23 in Kaloleni PMCC No. 178 of 2022)

JUDGMENT

1. The Respondents herein filed Kaloleni PMCC No. 178 of 2022 against the Appellant, as legal representatives of the estate of Peter Njole Zuma (the deceased) under the *Fatal Accidents Act* and the *Law Reform Act* on their own behalf and on behalf of the deceased's dependents. They claimed both general and special damages arising from a road traffic accident that occurred on 1.2.22 at Kokotoni along Mazeras-Mariakani Road in which the deceased sustained fatal injuries.
2. Following hearing the trial magistrate entered judgment on 22.11.23 in favour of the Appellant as follows:
Liability against the Appellant 100%
Pain & suffering Kshs. 50,000/=
Loss of expectation of life Kshs. 100,000/=
Loss of dependency Kshs. 1,510,480/=
Special damages Kshs. 46,500/=



Total Kshs. 1,706,980/=

Costs and interest at court rate.

3. Being aggrieved by the quantum of damages, the Appellant preferred the Appeal herein, the grounds of which are reproduced hereunder:
 1. That the Learned Principal Magistrate erred in awarding to the Plaintiff the sum of Kshs. 1,510,480.00/= for loss of dependency in that the said sum is so excessive as to amount to an erroneous estimate of the damages payable to the Respondents.
 2. That the Learned Principal Magistrate erred in not holding that in the absence of any documentary and credible evidence in respect of the actual earnings of the deceased there was no evidence before the Honourable Court to assess damages for loss of dependency under the *Fatal Accidents Act*.
 3. That the Learned Principal Magistrate erred in adopting a monthly wage of Kshs. 18,881.00/= based on the 2022 Wages Regulation whilst calculating the damages payable for loss of dependency when it was clear that the accident herein occurred on 1st February, 2022 before Wages Regulation 2022 came into effect on 1st May, 2022.
 4. That the Learned Principal Magistrate erred in not awarding to the Respondents a global sum for loss of dependency under the *Fatal Accidents Act* in the absence of credible evidence of the deceased's monthly earnings.
 5. That the Learned Principal Magistrate erred in awarding to the Respondents a sum of Kshs. 150,000/= for pain and suffering when there was clear evidence before her that the deceased died at the scene of accident.
 6. That the Learned Principal Magistrate erred in law in making awards under the various heads by failing to take into account that the general damages awarded to the Respondent would be invested to earn interest. If the Learned Principal Magistrate had borne that factor in mind it is reasonably possible that she would have awarded a lesser amount to the Plaintiff under each head.
 7. The Learned Principal Magistrate erred in law failing: -
 - a. To appreciate the significance of the various facts that emerged from the evidence of the Plaintiff's witnesses.
 - b. To consider or properly consider all the evidence before her and/or
 - c. To make any or any proper findings on the aspect of quantum of damages on the evidence before her
 8. That the Learned Principal Magistrate erred in failing to consider or properly consider the written submissions filed by Counsel for the Defendant/Appellant.
4. The Appellant prayed that the appeal be allowed with costs herein and in the court below and that the judgment delivered on 22.11.23 be set aside and/or varied as this Court may deem fit.
5. I have re-examined the entire record and given due consideration to the submissions by the parties' respective counsel. This being a first appeal, the Court is under a duty to reconsider and re-evaluate the evidence and draw its own conclusion. However, the Court must make due allowance with respect to the fact that it has neither seen nor heard the witnesses. These principles were set out in *Selle*



and another –vs- Associated Motor Boat Company Ltd.& Others (1968) EA 123 by Sir Clement De Lestang, V. P. as follows:

An appeal to this court from a trial by the High Court is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should made due allowance in this respect.

6. In its submissions, the Appellant collapsed the grounds and confined its arguments to the awards for loss of dependency and pain and suffering.
7. On pain and suffering, the Appellant submitted that the deceased died on the spot. The Appellant thus contended that an award of Kshs. 10,000/= was sufficient. Reliance was placed on the case of Wachira Joseph & 2 others v Hannah Wangui Makumi & another [2021] eKLR where Kshs. 10,000/= was awarded for the deceased who died the same day. For the Respondents, it was submitted that contrary to the assertion of the Appellant, the award under this head was Kshs. 50,000/= and not Kshs. 150,000/=. Further that the evidence on record shows that the deceased died in hospital. To the Respondents, the award by the trial court was not inordinately high.
8. In her judgment, the trial Magistrate noted that the deceased died on arrival in hospital. Guided by the case of Sukari Industries Limited v Clyde Machimbo Juma [2016] eKLR the trial Magistrate stated that an award of 50,000/= was reasonable and fair.
9. In the cited case, Majanja, J. dealt with a case where the deceased died instantly. The learned Judge had this to say on the award of pain and suffering:

On the first issue, I hold that it is natural that any person who suffers injury as a result of an accident will suffer some form of pain. The pain may be brief and fleeting but it is nevertheless pain for which the deceased's estate is entitled to compensation. The generally accepted principle is that nominal damages will be awarded on this head for death occurring immediately after the accident. Higher damages will be awarded if the pain and suffering is prolonged before death. According to various decisions of the High Court, the sums have ranged from Kshs 10,000 to Kshs 100,000 over the last 20 years hence I cannot say that that the sum of Kshs 50,000 awarded under this head is unreasonable.

10. It has been repeatedly stated by our courts that the generally accepted principle is that nominal damages will be awarded for pain and suffering where death occurs immediately after the accident. The awards range from Kshs. 10,000/= to Kshs. 100,000/= with higher damages being awarded if the pain and suffering was prolonged before death.
11. The police abstract on record herein shows that the accident took place on 1.2.22 at 5.30 pm and the post mortem report indicates that the deceased died on the same day at 6pm. It is thus not correct that the deceased died instantly. In tandem with the generally accepted principle, I find that the award made of Kshs. 50,000/= for pain and suffering for the deceased who died 30 minutes after the accident is not unreasonable.
12. On loss of dependency, the Appellant submitted that the trial Magistrate erred in awarding a sum of Kshs. 1,510,480/= without giving reasons on how she arrived at the same, given that she clearly stated that the Respondents did not produce any document to prove that the deceased was a tricycle driver earning Kshs. 20,000/= per month. The Appellant further faulted the trial Magistrate for adopting the Wages Regulation Order, 2022 which came into force on 1.5.22 whereas the accident took place on



- 15.2.22. It was argued that the Order of 2018 ought to have been applied. As such, the trial magistrate ought to have applied the minimum wage of Kshs. 13,341,30 for a driver in Samburu, Kwale which is outside Nairobi, Mombasa, Kisumu, Mavoko, Ruiru and Limuru and not Kshs. 18,881.00.
13. The Respondents countered this by submitting that it was proper for the trial Magistrate to apply the minimum wage applicable at the time of the judgment as it is based on what the deceased would have continued to earn.
14. In the impugned judgment, the trial Magistrate was persuaded that the deceased was a tricycle ‘driver’ having died riding one. She however noted that nothing was placed before the court to prove that the deceased earned Kshs. 20,000/= as a tricycle ‘driver’. She thus applied the minimum wage of a driver as at February 2022 which she said was Kshs. 18,881/= as per the Regulations of Wages Order.
15. From the Appellant’s submissions, there is no contestation regarding the occupation of the deceased. What the Appellant disputes is the minimum monthly wage applied.
16. The wage order in place as at February 2022 was The Regulations of Wages (General) (Amendment) Order, 2018. The death certificate on record indicates that the deceased was a resident of Samburu, which is in Kwale county. Samburu is not within the cities of Nairobi, Mombasa, Kisumu or Nakuru. It is also not within the former municipalities and Town councils of Mavoko, Ruiru and Limuru. Samburu falls under the category of “All other areas”.
17. The Regulations of Wages (General) (Amendment) Order, 2018 does not provide for a 3 wheeler rider, which the deceased was. The closest comparable occupation is that of a driver of cars and light vans in the 6th row of the said order. The minimum monthly wage of such driver is Kshs. 13,975.30, while the minimum wage of Kshs. 18,881/= applied by the trial Magistrate is for medium sized vehicle, which is far removed from the 3 wheeler which the deceased operated. The trial Magistrate thus misdirected herself in calculating the award for loss of dependency by using the wrong minimum wage.
18. Applying correct minimum wage, the award under this head is Kshs. 1,118,024/= made up as follows:
 $13,975.30 \times 12 \times 10 \times 2/3 = 1,118,024$
19. The upshot is that the Appeal partially succeeds. The trial Magistrate’s award of Kshs. 1,510,480/= on loss of dependency is hereby set aside and the Court substitutes therefor, the amount of Kshs. 1,118,024/=. All other awards remain unchanged.
20. Each party shall bear own costs.

DATED SIGNED AND DELIVERED IN MALINDI THIS 21ST DAY OF FEBRUARY 2025

M. THANDE
JUDGE

